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State v. Weimer Respondent's Brief Dckt. 42708

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 42708
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2010-21435
)	
SHANE CHARLES WEIMER,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Weimer failed to establish that the district court abused its discretion by relinquishing jurisdiction?

Weimer Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Weimer pled guilty to felony eluding a peace officer and the district court imposed a unified sentence of five years, with two years fixed, suspended the sentence, and placed Weimer on supervised probation for five years. (R., pp.88-95.) After Weimer violated his probation three separate times, the district court finally revoked probation,

ordered Weimer's underlying sentence executed, and retained jurisdiction. (R., pp.140-44, 197-201, 271-73.) Following the period of retained jurisdiction, the district court relinquished jurisdiction. (Order Relinquishing Jurisdiction and Commitment (Augmentation).) Weimer filed a notice of appeal timely from the district court's order relinquishing jurisdiction. (R., pp.277-80; Notice of Appeal filed June 25, 2015 (Augmentation).)

Weimer asserts that the district court abused its discretion by relinquishing jurisdiction in light of his letters of support from other inmates and his claim that, while on his rider, he "made sufficient progress to warrant a placement on probation." (Appellant's brief, pp.3-6.) Weimer has failed to establish an abuse of discretion.

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to relinquish jurisdiction is a matter within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of that discretion. See State v. Hood, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). A court's decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under I.C. § 19-2521. State v. Chapel, 107 Idaho 193, 194, 687 P.2d 583, 584 (Ct. App. 1984).

At the jurisdictional review hearing, the state addressed Weimer's ongoing disregard for the terms of probation and institutional rules, his continued dishonesty and failure to accept responsibility for his poor behavior, his high risk to reoffend, and his failure to demonstrate adequate rehabilitative progress while on his rider. (6/15/15 Tr.,

p.13, L.12 – p.20, L.13 (Appendix A).) The district court subsequently articulated the correct legal standards applicable to its decision and also set forth its reasons for relinquishing jurisdiction. (6/15/15 Tr., p.45, L.2 – p.59, L.24 (Appendix B).) The state submits that Weimer has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the jurisdictional review hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

Conclusion

The state respectfully requests this Court to affirm the district court's order relinquishing jurisdiction.

DATED this 9th day of March, 2016.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 9th day of March, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

13	15
<p>01:47PM 1 State having no further record to make at this</p> <p>01:47PM 2 point, Mr. Weimer, simply for the record, I will</p> <p>01:47PM 3 indicate that I will not admit those documents at</p> <p>01:47PM 4 this time and would just proceed on what you</p> <p>01:47PM 5 previously submitted to the Court.</p> <p>01:47PM 6 Any other evidence, sir, then, that you</p> <p>01:47PM 7 would have to offer at this point?</p> <p>01:47PM 8 MR. WEIMER: No, Your Honor.</p> <p>01:47PM 9 THE COURT: Okay. Mr. Harmer, then, does</p> <p>01:47PM 10 the State wish to offer any argument as to</p> <p>01:47PM 11 disposition at this time?</p> <p>01:47PM 12 MR. HARMER: Yes, Your Honor. I have been</p> <p>01:47PM 13 working on Mr. Weimer's case for a long time,</p> <p>01:47PM 14 through several of his prior PVs and when he left</p> <p>01:47PM 15 on this rider and now that he is back. What I see</p> <p>01:48PM 16 throughout that time period is that nothing has</p> <p>01:48PM 17 changed. It's Mr. Weimer's attitude that gets him</p> <p>01:48PM 18 in the most trouble.</p> <p>01:48PM 19 He can put forth effort, he can talk to</p> <p>01:48PM 20 people, he can spin his wheels toward achieving</p> <p>01:48PM 21 what he sees as the goals. But when he's</p> <p>01:48PM 22 confronted with thinking errors that he has and</p> <p>01:48PM 23 mistakes that he makes and choices that he makes,</p> <p>01:48PM 24 he lies about them and he tries hide them, he</p> <p>01:48PM 25 tries to minimize them. And then when he finally</p>	<p>01:50PM 1 When I look at his offences, they</p> <p>01:50PM 2 follow the same pattern. Looking on Page 4 now,</p> <p>01:50PM 3 at the three written warnings he got, one of them</p> <p>01:50PM 4 for each of the months that he was in. On 11-14</p> <p>01:50PM 5 of '14 he was caught making an unauthorized call.</p> <p>01:50PM 6 When asked about it he lied. He said it was a</p> <p>01:50PM 7 legal call. And they found out no, he had</p> <p>01:50PM 8 contacted his wife and was even arguing with her</p> <p>01:50PM 9 during the phone call. When confronted that the</p> <p>01:50PM 10 number he gave was not an attorney's office, he</p> <p>01:50PM 11 said he was calling his wife's cell phone at the</p> <p>01:50PM 12 attorney's office.</p> <p>01:50PM 13 On 12-1 of '14 he is given a written</p> <p>01:50PM 14 warning for going to an unit office at an</p> <p>01:50PM 15 unauthorized time. And that seems to be one of</p> <p>01:51PM 16 those indications where Mr. Weimer has been given</p> <p>01:51PM 17 specific rules to follow and feels that he is the</p> <p>01:51PM 18 exception to each of those rules.</p> <p>01:51PM 19 On January 14th of '15 he is given a</p> <p>01:51PM 20 written warning for again lying to staff. He</p> <p>01:51PM 21 said -- he was found to have magazine articles</p> <p>01:51PM 22 about the consumption of marijuana that were on</p> <p>01:51PM 23 his bunk. When asked about it he said he had no</p> <p>01:51PM 24 idea how the articles ended up there. But that it</p> <p>01:51PM 25 was later found out that he had simply asked</p>
14	16
<p>01:48PM 1 gets stuck in his own lies and fantasies, he tries</p> <p>01:48PM 2 to blame them on somebody else. Claims there is</p> <p>01:48PM 3 some conspiracy that has been laid out to trick</p> <p>01:48PM 4 him or to carry out someone's vendetta against</p> <p>01:48PM 5 him. And that information comes through loud and</p> <p>01:49PM 6 clear on this rider report. It is just the same</p> <p>01:49PM 7 as we have seen all along.</p> <p>01:49PM 8 I see in this rider report he did a</p> <p>01:49PM 9 90-day rider. Apparently the traditional rider</p> <p>01:49PM 10 has now become only 90 days. I see that in his</p> <p>01:49PM 11 LSIR review he has seen as a high risk to</p> <p>01:49PM 12 reoffend. In fact, is in the high risk range on</p> <p>01:49PM 13 eight of ten different criminal risk and needs</p> <p>01:49PM 14 areas and medium risk on the last two.</p> <p>01:49PM 15 I show that he did not complete New</p> <p>01:49PM 16 Directions, did not complete New Release, even</p> <p>01:49PM 17 though he started those back in October. I see</p> <p>01:49PM 18 that the IDOC did not find reason to ask for an</p> <p>01:49PM 19 extension of time or see reason to continue him</p> <p>01:49PM 20 for some time because he was making some progress.</p> <p>01:49PM 21 Instead, they chose just to send this. Even</p> <p>01:49PM 22 though there was plenty of time left within the</p> <p>01:50PM 23 retained jurisdiction period, they sent this</p> <p>01:50PM 24 report indicating they don't think he will reach</p> <p>01:50PM 25 the goals that they had set out for him.</p>	<p>01:51PM 1 another offender if he could read the articles.</p> <p>01:51PM 2 They were about edible marijuana.</p> <p>01:51PM 3 And it says at the end, I will just</p> <p>01:51PM 4 read it, "Mr. Weimer has not shown any progress</p> <p>01:51PM 5 whatsoever when it comes to taking ownership of</p> <p>01:51PM 6 his behavior. He continues to lie. And when</p> <p>01:51PM 7 there is evidence of him lying, he then tries to</p> <p>01:51PM 8 make excuses or talk around the issue."</p> <p>01:52PM 9 His own comments on how he did on his</p> <p>01:52PM 10 rider on Page 5 indicate, he says, "I don't feel I</p> <p>01:52PM 11 have made as much progress as I should have. It's</p> <p>01:52PM 12 not for lack of checking me. It's hard sometimes</p> <p>01:52PM 13 to see the things others see and worse to change</p> <p>01:52PM 14 them."</p> <p>01:52PM 15 And then there is a facilitator report</p> <p>01:52PM 16 from New Directions. They talked about him not</p> <p>01:52PM 17 being honest, not taking accountability,</p> <p>01:52PM 18 minimizing his offences, denying his offences. He</p> <p>01:52PM 19 had indicated that he was adamant that he was set</p> <p>01:52PM 20 up by someone as to one of his UAs that came back</p> <p>01:52PM 21 for marijuana on his prior probation violation, a</p> <p>01:52PM 22 violation which he admitted to his PO at the time.</p> <p>01:52PM 23 When behavior was brought to his</p> <p>01:52PM 24 attention he would often blatantly lie, saying,</p> <p>01:53PM 25 quote, "it was a legal call." When this lie would</p>

<p style="text-align: center;">17</p> <p>01:53PM 1 be exposed he would use manipulation tactics to</p> <p>01:53PM 2 minimize or justify his behavior to place blame on</p> <p>01:53PM 3 someone else. His inability to take ownership for</p> <p>01:53PM 4 his behavior is more significant than many of the</p> <p>01:53PM 5 offenders I have worked with over the past two</p> <p>01:53PM 6 decades."</p> <p>01:53PM 7 Then they talked about his Social</p> <p>01:53PM 8 Security disability debit card. He did not notify</p> <p>01:53PM 9 Social Security that he was incarcerated and he</p> <p>01:53PM 10 should have stopped the benefits. The benefits</p> <p>01:53PM 11 kept coming in and he allowed his wife to continue</p> <p>01:53PM 12 using them. They confronted him about this and he</p> <p>01:53PM 13 lied to them about that. When asked why he lied</p> <p>01:53PM 14 the day before when they had asked him, his</p> <p>01:53PM 15 response was that she wasn't using it now.</p> <p>01:53PM 16 It should be noted that he -- of</p> <p>01:53PM 17 concern -- an example of his criminal thinking,</p> <p>01:53PM 18 and it says, "Of concern was an issue regarding</p> <p>01:54PM 19 Mr. Weimer writing a letter to his wife that</p> <p>01:54PM 20 expressed the desire to find a little slave which</p> <p>01:54PM 21 he would blind and utilize for sex acts once he was</p> <p>01:54PM 22 released." When asked about it, he stated it was</p> <p>01:54PM 23 only a fantasy. However, they found that he had</p> <p>01:54PM 24 asked another offender if he knew of any young</p> <p>01:54PM 25 ladies who would be willing to be sex slaves. And</p>	<p style="text-align: center;">19</p> <p>01:55PM 1 recommendation notice that was given to him, it</p> <p>01:55PM 2 identifies the three main grounds of why they feel</p> <p>01:55PM 3 that Your Honor should relinquish jurisdiction.</p> <p>01:55PM 4 And I think this is interesting, because</p> <p>01:55PM 5 throughout the hearings that we have had over the</p> <p>01:55PM 6 last several months in preparation for this</p> <p>01:55PM 7 hearing, Mr. Weimer's identified a number of</p> <p>01:55PM 8 different reasons why he thinks he got the</p> <p>01:56PM 9 recommendation that he did. None of those address</p> <p>01:56PM 10 the real concerns which are listed right here.</p> <p>01:56PM 11 Number one, you appear to continue</p> <p>01:56PM 12 using criminal or addictive thinking patterns,</p> <p>01:56PM 13 attitudes and beliefs. Number two, you have not</p> <p>01:56PM 14 demonstrated that you are an appropriate candidate</p> <p>01:56PM 15 for probation. And number three, you don't appear</p> <p>01:56PM 16 to be willing to take an honest look of your</p> <p>01:56PM 17 criminal behavior, beliefs or attitudes, and you</p> <p>01:56PM 18 continue to pose a significant risk to reoffend if</p> <p>01:56PM 19 released back in the community at this time.</p> <p>01:56PM 20 I think I am with the treatment</p> <p>01:56PM 21 provider who said that in 20 years he has not seen</p> <p>01:56PM 22 someone really this adamantly against taking</p> <p>01:56PM 23 responsibility. I haven't been at this 20 years,</p> <p>01:56PM 24 I have only been at it 12, but I think he is a</p> <p>01:56PM 25 good sample of someone who really has gone through</p>
<p style="text-align: center;">18</p> <p>01:54PM 1 when confronted with it, he admitted that he did</p> <p>01:54PM 2 talk to the other offender about it.</p> <p>01:54PM 3 The concern here I think is</p> <p>01:54PM 4 well-founded. They identify it as the insinuated</p> <p>01:54PM 5 lack of consent from the little slave and</p> <p>01:54PM 6 Mr. Weimer soliciting other offenders to help him.</p> <p>01:54PM 7 When we look at his recommendations at</p> <p>01:54PM 8 the bottom of Page 7, it says, "He does not appear</p> <p>01:54PM 9 to be amenable" -- they say "amendable," probably</p> <p>01:54PM 10 both are true, but "does not appear to be amenable</p> <p>01:54PM 11 to treatment at this time. He has not</p> <p>01:54PM 12 demonstrated the ability to follow even the</p> <p>01:54PM 13 smallest of rules. When confronted on certain</p> <p>01:55PM 14 behavior his first course of action oftentimes</p> <p>01:55PM 15 would be to lie and deny the behavior. When he</p> <p>01:55PM 16 did not do that, he would make excuses for his</p> <p>01:55PM 17 actions. He would always have an excuse to</p> <p>01:55PM 18 justify or minimize his actions.</p> <p>01:55PM 19 "Mr. Weimer continued to violate</p> <p>01:55PM 20 sanctions and rules even after being caught for</p> <p>01:55PM 21 the same rule violation on multiple occasions.</p> <p>01:55PM 22 Mr. Weimer failed to comply with the</p> <p>01:55PM 23 expectation of his program and continues to</p> <p>01:55PM 24 demonstrate criminalogenic behavior."</p> <p>01:55PM 25 And then when we look at the</p>	<p style="text-align: center;">20</p> <p>01:56PM 1 the ringer. He has had at least two prior</p> <p>01:56PM 2 probation violations, three stints on probation,</p> <p>01:56PM 3 and now this rider. None of those have changed</p> <p>01:56PM 4 what was the core problem initially, trying to</p> <p>01:57PM 5 hide from his responsibilities.</p> <p>01:57PM 6 This is an eluding case where he nearly</p> <p>01:57PM 7 struck one officer, went through a fence, ran a</p> <p>01:57PM 8 stop sign, et cetera, et cetera, while police were</p> <p>01:57PM 9 trying to stop him. He's simply hiding from the</p> <p>01:57PM 10 responsibility that he really does need to face.</p> <p>01:57PM 11 And because none of that has ever changed</p> <p>01:57PM 12 throughout the course of this whole case, I think</p> <p>01:57PM 13 relinquishment recommendation is appropriate.</p> <p>01:57PM 14 THE COURT: Okay. Thank you.</p> <p>01:57PM 15 Mr. Weimer, in this case then, sir,</p> <p>01:57PM 16 technically, since you are representing yourself,</p> <p>01:57PM 17 you will have two chances to make a statement to</p> <p>01:57PM 18 the Court. First of all, your closing argument or</p> <p>01:57PM 19 your sentencing argument. And then secondly, a</p> <p>01:57PM 20 chance for a final statement or allocution, if you</p> <p>01:57PM 21 will. You can combine the two if you wish. If</p> <p>01:57PM 22 you would rather do them one at a time, I will</p> <p>01:57PM 23 welcome whatever approach you would like to take.</p> <p>01:57PM 24 Did you wish to make a statement as to</p> <p>01:57PM 25 sentencing at this time and reserve the right for</p>

APPENDIX B

<p style="text-align: center;">45</p> <p>02:32PM 1 THE COURT: Okay. Thank you.</p> <p>02:32PM 2 The Court has considered the documents</p> <p>02:32PM 3 submitted by Mr. Weimer and I will go through</p> <p>02:32PM 4 those in some detail at this point. And I have</p> <p>02:32PM 5 also considered the presentence materials</p> <p>02:32PM 6 including the APSI that was prepared on the 23rd</p> <p>02:32PM 7 of January of 2015 and received by the Court on</p> <p>02:32PM 8 January 29th of 2015.</p> <p>02:32PM 9 Briefly, as to Mr. Weimer's objection</p> <p>02:32PM 10 to the APSI being admitted or considered by the</p> <p>02:33PM 11 Court, in this case it is a presentence document.</p> <p>02:33PM 12 Because it is a sentencing document, the Court may</p> <p>02:33PM 13 rely on hearsay in making a determination in terms</p> <p>02:33PM 14 of a presentence report. And therefore, the fact</p> <p>02:33PM 15 that this document may contain hearsay would not</p> <p>02:33PM 16 preclude the Court from considering it.</p> <p>02:33PM 17 In addition, as to the objection as to</p> <p>02:33PM 18 Mr. Anderson's statements and whether or not they</p> <p>02:33PM 19 may or may not have been truthful. While the</p> <p>02:33PM 20 Court can certainly take those objections into</p> <p>02:33PM 21 consideration, it does not preclude the Court from</p> <p>02:33PM 22 considering the APSI with the objections noted.</p> <p>02:33PM 23 And therefore the Court, again, will</p> <p>02:33PM 24 continue to review and consider information in the</p> <p>02:33PM 25 APSI in terms of its sentencing decision.</p>	<p style="text-align: center;">47</p> <p>02:35PM 1 program.</p> <p>02:35PM 2 There was a statement from a Craig</p> <p>02:35PM 3 Newhart, again an individual that apparently</p> <p>02:35PM 4 shared space with Mr. Weimer. And in this</p> <p>02:35PM 5 situation, again, in response to the written</p> <p>02:35PM 6 warning from January the 14th of 2015, noted that</p> <p>02:35PM 7 when Mr. Weimer returned to his bunk he was asking</p> <p>02:35PM 8 where the pieces of paper came from. And in this</p> <p>02:36PM 9 situation, again, the indications were that, from</p> <p>02:36PM 10 Mr. Newhart, that in fact Mr. Weimer was not aware</p> <p>02:36PM 11 of those pieces of paper unlike the claims in the</p> <p>02:36PM 12 APSI that he had been untruthful in reporting he</p> <p>02:36PM 13 didn't know where they came from and, in fact, he</p> <p>02:36PM 14 had gotten them from another person or inmate at</p> <p>02:36PM 15 that -- at his request.</p> <p>02:36PM 16 There was a character affidavit from</p> <p>02:36PM 17 Nathan Wesley basically describing Mr. Weimer as</p> <p>02:36PM 18 honest, polite and respectful. And letter from</p> <p>02:36PM 19 another inmate, Michael Collins, and Mr. Weimer</p> <p>02:36PM 20 has alluded to this, who described Mr. Weimer as a</p> <p>02:36PM 21 person willing to work hard to accomplish his</p> <p>02:36PM 22 goals and to improve himself.</p> <p>02:36PM 23 Finally, an affidavit from a Milo</p> <p>02:36PM 24 Morgan noting Mr. Weimer's efforts when he first</p> <p>02:36PM 25 got into the rider program. Once again, similar</p>
<p style="text-align: center;">46</p> <p>02:33PM 1 In terms of the documents submitted by</p> <p>02:33PM 2 Mr. Weimer himself, there were several. There</p> <p>02:34PM 3 were two office occupation books, one for the</p> <p>02:34PM 4 library, the other for offender placement</p> <p>02:34PM 5 services. It appeared that Mr. Weimer did go</p> <p>02:34PM 6 through offender placement services beginning in</p> <p>02:34PM 7 October of 2014 and then began the library</p> <p>02:34PM 8 occupation book in December of 2014 up until his</p> <p>02:34PM 9 point of being fired from the library.</p> <p>02:34PM 10 There were several affidavits or</p> <p>02:34PM 11 statements from inmates, including Callin Ellis,</p> <p>02:34PM 12 who also went on a rider. He noted an issue with</p> <p>02:34PM 13 what he called "clicking up" on the rider program</p> <p>02:34PM 14 where certain groups would target a specific</p> <p>02:34PM 15 person or persons with the accountability system</p> <p>02:34PM 16 or what he called "booking slips" and as a result,</p> <p>02:34PM 17 causing some people to isolate while on the rider</p> <p>02:34PM 18 program. Noting the problem with the</p> <p>02:35PM 19 accountability system is that the inmates could</p> <p>02:35PM 20 not make the system work, and it was not really</p> <p>02:35PM 21 clear why, other than the issues with the clicking</p> <p>02:35PM 22 up that have been noted. Also letting a breach of</p> <p>02:35PM 23 confidentiality and a problem with inmates being</p> <p>02:35PM 24 able to talk among themselves and try to encourage</p> <p>02:35PM 25 each other in terms of their working with the</p>	<p style="text-align: center;">48</p> <p>02:36PM 1 to the affidavit from Mr. Ellis, noting that again</p> <p>02:36PM 2 he was targeted, that Mr. Weimer was targeted with</p> <p>02:37PM 3 the booking slips, and in this situation also</p> <p>02:37PM 4 claiming that the case managers didn't bring in</p> <p>02:37PM 5 Mr. Weimer to sign off and complete the various</p> <p>02:37PM 6 programs that he was part of.</p> <p>02:37PM 7 There were several documents concerning</p> <p>02:37PM 8 his programming itself including career planning</p> <p>02:37PM 9 and employability portfolio checklist that had</p> <p>02:37PM 10 been signed as completed on September 16th, 2014;</p> <p>02:37PM 11 certificate of completion for vocational safety,</p> <p>02:37PM 12 November 4th, 2014; transition plan portfolio.</p> <p>02:37PM 13 And again, noting the issues with the</p> <p>02:37PM 14 hip replacement that Mr. Weimer has alluded to</p> <p>02:37PM 15 here, and noting also his desire or hope of being</p> <p>02:37PM 16 able to travel to North Dakota and requesting</p> <p>02:37PM 17 either commutation of the sentence or Rule 35</p> <p>02:37PM 18 motion to reconsider. Copy of a resume.</p> <p>02:38PM 19 Documents entitled "Getting Started</p> <p>02:38PM 20 With Sobriety"; Targeting Changes in Family</p> <p>02:38PM 21 Rules," which he had filled out; copies of</p> <p>02:38PM 22 recommendation notice to relinquish jurisdiction,</p> <p>02:38PM 23 of which the Court was aware.</p> <p>02:38PM 24 Copies of numerous other documents</p> <p>02:38PM 25 including a functional resource work sheet; Smart,</p>

<p style="text-align: right;">49</p> <p>02:38PM 1 good example; data sheet; Mr. Anderson's New</p> <p>02:38PM 2 Direction B group rules; group assignments</p> <p>02:38PM 3 required for Mr. Anderson's New Direction B group,</p> <p>02:38PM 4 many of which were crossed off; and NICI community</p> <p>02:38PM 5 service hours as well, which total about 28 hours</p> <p>02:38PM 6 by my count or calculation.</p> <p>02:38PM 7 Application for phase up advancement,</p> <p>02:38PM 8 Mr. Welmer had alluded to this; some various Phase</p> <p>02:38PM 9 Up documents including orientation to treatment;</p> <p>02:38PM 10 treatment to reentry; application for Phase</p> <p>02:38PM 11 advancement on December 24th of 2014; Appendix 4,</p> <p>02:38PM 12 relapse prevention plan dated January 6th of 2015;</p> <p>02:38PM 13 a series of letters that appeared to be from the</p> <p>02:38PM 14 defendant on why it was important that we have</p> <p>02:38PM 15 rules.</p> <p>02:38PM 16 Book 4, situations sheets leading to</p> <p>02:38PM 17 relapse; Book 4 self-chosen number two, basically</p> <p>02:38PM 18 for getting himself in a particular situation;</p> <p>02:38PM 19 self-chosen four, not following prescribed pain</p> <p>02:38PM 20 regulations to forego pain; Book 4, self-chosen</p> <p>02:38PM 21 number five, letting things get overly</p> <p>02:38PM 22 complicated.</p> <p>02:38PM 23 Book 3, thinking report, self-chosen;</p> <p>02:38PM 24 Book 3, self-chosen two; Book 3, self-chosen</p> <p>02:38PM 25 three. The incident in December 2014; Book 3,</p>	<p style="text-align: right;">51</p> <p>02:41PM 1 Hills Elementary School at 12 with a friend. Most</p> <p>02:41PM 2 important, to get out of the program. Comment</p> <p>02:41PM 3 about being shocked that he is a role model, and</p> <p>02:41PM 4 then basically a faulty core belief of not needing</p> <p>02:41PM 5 anyone.</p> <p>02:41PM 6 Again, the Court had considered and</p> <p>02:41PM 7 reviewed all of those documents, but had also</p> <p>02:41PM 8 reviewed the prior presentence materials that have</p> <p>02:41PM 9 been alluded to both by Mr. Welmer and Mr. Harmer.</p> <p>02:41PM 10 As has been noted by both individuals,</p> <p>02:41PM 11 Mr. Weimer has twice violated his probation in</p> <p>02:41PM 12 this case. The most recent time he was sent on</p> <p>02:41PM 13 the rider that now forms the basis of this rider</p> <p>02:41PM 14 review. Again, a traditional 90-day rider, even</p> <p>02:42PM 15 Mr. Weimer, in his statement to the Court has</p> <p>02:42PM 16 indicated that perhaps that is not quite enough</p> <p>02:42PM 17 time to really address all of the issues that an</p> <p>02:42PM 18 individual might need to in order to be successful</p> <p>02:42PM 19 on probation.</p> <p>02:42PM 20 The comments from the APSI include he</p> <p>02:42PM 21 failed to complete New Direction and Prerelease.</p> <p>02:42PM 22 While the Court acknowledges the note from J Grant</p> <p>02:42PM 23 basically indicating that he had at least</p> <p>02:42PM 24 completed his prerelease career plan, the Court</p> <p>02:42PM 25 did not read that or understand that to mean that</p>
<p style="text-align: right;">50</p> <p>02:39PM 1 self-chosen four, smoking pot after hip</p> <p>02:40PM 2 replacement; Book 3, self-chosen number five,</p> <p>02:40PM 3 being a nonconformist.</p> <p>02:40PM 4 Book 4, self-chosen number three,</p> <p>02:40PM 5 getting, and I am quoting here, pissed off at LE</p> <p>02:40PM 6 during program.</p> <p>02:40PM 7 Lifetime Line Book 1, letter to loved</p> <p>02:40PM 8 ones. Incident, original sentencing date.</p> <p>02:40PM 9 Thinking report on riding a motorcycle on a</p> <p>02:40PM 10 suspended driver's license. Incident, backing</p> <p>02:40PM 11 over Ada County police officers in a Ford Ranger</p> <p>02:40PM 12 four by four. Another incident driving without a</p> <p>02:40PM 13 driver's license. Another incident, rule broken</p> <p>02:40PM 14 but not caught at NICI, drinking coffee before a</p> <p>02:40PM 15 black out. Rule broken, not caught, taking shower</p> <p>02:40PM 16 before 5:00 a.m. Sharing commissary,</p> <p>02:40PM 17 Thanksgiving, again not caught.</p> <p>02:40PM 18 Letter to the Court from the defendant</p> <p>02:40PM 19 asking that I relinquish jurisdiction saying the</p> <p>02:40PM 20 program is not for him and he wants to finish his</p> <p>02:41PM 21 time. Letter from him to self basically telling</p> <p>02:41PM 22 him to get things together. Book 2, law broken</p> <p>02:41PM 23 not caught, smoking marijuana. Book 2, law</p> <p>02:41PM 24 broken, not caught, no insurance. Book 2,</p> <p>02:41PM 25 self-chosen, driving earth mover through Indian</p>	<p style="text-align: right;">52</p> <p>02:42PM 1 he had yet fully completed the prerelease itself,</p> <p>02:43PM 2 he had simply completed one aspect of it.</p> <p>02:43PM 3 And in this situation, while the Court</p> <p>02:43PM 4 acknowledges the numerous documents that</p> <p>02:43PM 5 Mr. Weimer has submitted in terms of what work he</p> <p>02:43PM 6 did do, not only on prerelease but on New</p> <p>02:43PM 7 Direction -- no, sir. I am not hearing any more</p> <p>02:43PM 8 comments from you at this point. But also from</p> <p>02:43PM 9 New Directions, again, indications are that he did</p> <p>02:43PM 10 not fully complete either program prior to this</p> <p>02:43PM 11 report being submitted.</p> <p>02:43PM 12 In New Directions, as Mr. Harmer has</p> <p>02:43PM 13 alluded to, the facilitator described Mr. Weimer's</p> <p>02:43PM 14 performance as poor, noting that he knew what</p> <p>02:43PM 15 should be done or what he should be doing but his</p> <p>02:43PM 16 behavior indicated a desire to use criminal</p> <p>02:43PM 17 thinking. He failed to show progress in being</p> <p>02:43PM 18 honest or accounting for his actions, he minimized</p> <p>02:43PM 19 prior offences. When a behavior issue was brought</p> <p>02:43PM 20 to his attention he would often lie. And when</p> <p>02:43PM 21 that was brought to his attention he would</p> <p>02:44PM 22 minimize or justify his behavior or place blame on</p> <p>02:44PM 23 another.</p> <p>02:44PM 24 His patterns of dishonesty and deceit</p> <p>02:44PM 25 increase his risk of continued criminal activity,</p>

<p style="text-align: center;">53</p> <p>02:44PM 1 and note that while he can give good feedback to</p> <p>02:44PM 2 others, he can't seem to follow his own advice.</p> <p>02:44PM 3 And that he appears -- it appears that</p> <p>02:44PM 4 his behavior, if he is relinquished, will only</p> <p>02:44PM 5 serve -- it appears to be a belief, excuse me,</p> <p>02:44PM 6 that if he is relinquished, he will only serve an</p> <p>02:44PM 7 additional six months in custody.</p> <p>02:44PM 8 In this situation I agree with</p> <p>02:44PM 9 Mr. Weimer, that there was some issue or question</p> <p>02:44PM 10 as to whether not he had even begun the prerelease</p> <p>02:44PM 11 program in my review of the materials submitted.</p> <p>02:44PM 12 And I am specifically referring to Page 4 of the</p> <p>02:44PM 13 report where it indicated that the offender</p> <p>02:44PM 14 reports learning and then quote, "Mr. Weimer had</p> <p>02:44PM 15 not started in this group at the time of this</p> <p>02:44PM 16 report," clearly that is in error. It is clear</p> <p>02:45PM 17 that Mr. Weimer had, in fact, started in the</p> <p>02:45PM 18 program and at a minimum had completed the career</p> <p>02:45PM 19 planning portion of the prerelease program.</p> <p>02:45PM 20 As Mr. Weimer has correctly noted,</p> <p>02:45PM 21 there were no formal disciplinary reports. There</p> <p>02:45PM 22 were the three written warnings that have been</p> <p>02:45PM 23 alluded to: One for making an unauthorized phone</p> <p>02:45PM 24 call, one for going to the unit office at an</p> <p>02:45PM 25 unauthorized time, and third for lying to staff on</p>	<p style="text-align: center;">55</p> <p>02:46PM 1 by Mr. Weimer himself I think demonstrated two</p> <p>02:46PM 2 issues. First of those is that the effort that he</p> <p>02:46PM 3 did put into the program. Again, it showed a lot</p> <p>02:46PM 4 of the work that he had done while in the rider</p> <p>02:47PM 5 program in this case. And also issues or</p> <p>02:47PM 6 information from the other inmates, some of which</p> <p>02:47PM 7 were very positive in terms of Mr. Weimer's</p> <p>02:47PM 8 character. But others of which tended to pass the</p> <p>02:47PM 9 blame to others, either through the clicking-up</p> <p>02:47PM 10 process that had been alluded to by some of the</p> <p>02:47PM 11 other individuals, or, in this case, the other</p> <p>02:47PM 12 information that had been provided as well in</p> <p>02:47PM 13 terms of the difficulties that really a lot of the</p> <p>02:47PM 14 inmates had in making the program work</p> <p>02:47PM 15 successfully for them.</p> <p>02:47PM 16 The Court, in deciding how to proceed</p> <p>02:47PM 17 in this case, has three options. I can simply</p> <p>02:47PM 18 relinquish jurisdiction, as recommended, in which</p> <p>02:47PM 19 case the underlying suspended sentence would be</p> <p>02:47PM 20 imposed, I could reinstate Mr. Weimer on</p> <p>02:48PM 21 probation, or the third option that I do have</p> <p>02:48PM 22 under certain circumstances would be to extend</p> <p>02:48PM 23 jurisdiction and ask that he be sent on another</p> <p>02:48PM 24 rider program.</p> <p>02:48PM 25 In this situation, the Court has given</p>
<p style="text-align: center;">54</p> <p>02:45PM 1 January the 14th. And again, this relates to</p> <p>02:45PM 2 those papers that were found on his bunk.</p> <p>02:45PM 3 The Court found no positive C notes in</p> <p>02:45PM 4 its review of the materials. There were several</p> <p>02:45PM 5 incidents that were not handled through informal</p> <p>02:45PM 6 DORs or sanctions, including being fired from his</p> <p>02:45PM 7 job at the library and again, having the sexually</p> <p>02:45PM 8 explicit letter. And Mr. Weimer has addressed</p> <p>02:45PM 9 that to some extent in his discussion with the</p> <p>02:45PM 10 Court here today.</p> <p>02:46PM 11 Again, to his credit, and Mr. Weimer</p> <p>02:46PM 12 has alluded to this in his statement to the Court</p> <p>02:46PM 13 today as well, he did state that he -- and this is</p> <p>02:46PM 14 in the APSI, that he had begun to have beliefs</p> <p>02:46PM 15 that he will begin to have success some day but</p> <p>02:46PM 16 doesn't feel he made as much progress as he should</p> <p>02:46PM 17 have when the report was issued. He did have a</p> <p>02:46PM 18 probation plan, and the Court certainly is well</p> <p>02:46PM 19 aware of that.</p> <p>02:46PM 20 But the APSI concluded that Mr. Weimer</p> <p>02:46PM 21 did not appear accountable -- or amenable to</p> <p>02:46PM 22 treatment and hasn't demonstrated the ability to</p> <p>02:46PM 23 follow even the smallest rules, and therefore</p> <p>02:46PM 24 recommended relinquishing jurisdiction.</p> <p>02:46PM 25 In large part the materials submitted</p>	<p style="text-align: center;">56</p> <p>02:48PM 1 its decision a good deal of thought before coming</p> <p>02:48PM 2 into court today and has certainly considered all</p> <p>02:48PM 3 the materials provided by Mr. Weimer for its</p> <p>02:48PM 4 consideration in terms of how best to proceed.</p> <p>02:48PM 5 Mr. Weimer has alluded to this, as has</p> <p>02:48PM 6 Mr. Harmer, that this LSI score was high</p> <p>02:48PM 7 indicating a high risk to reoffend. Mr. Weimer</p> <p>02:48PM 8 has said to me that although his prior performance</p> <p>02:48PM 9 on probation do raise serious issues as to whether</p> <p>02:48PM 10 or not continued time on probation would even be</p> <p>02:48PM 11 an appropriate option for the Court. Nonetheless,</p> <p>02:48PM 12 he has learned his lesson and is prepared to</p> <p>02:48PM 13 change and is asking for one more chance on</p> <p>02:49PM 14 probation rather than simply relinquishing</p> <p>02:49PM 15 jurisdiction.</p> <p>02:49PM 16 The problems, Mr. Weimer, that I have</p> <p>02:49PM 17 with that is I have heard that before. In this</p> <p>02:49PM 18 situation you assured me the last time I saw you</p> <p>02:49PM 19 and placed you on probation that I would not see</p> <p>02:49PM 20 you again and I did. In this case I gave you an</p> <p>02:49PM 21 opportunity at another rider rather than simply</p> <p>02:49PM 22 imposing the underlying sentence, and you</p> <p>02:49PM 23 struggled on that as well.</p> <p>02:49PM 24 In imposing sentence, my primary</p> <p>02:49PM 25 consideration is protecting the community. If I</p>

<p style="text-align: center;">57</p> <p>02:49PM 1 do nothing else, I must ensure that this community 02:49PM 2 is protected by the Court's actions. I do have 02:49PM 3 other considerations of punishment, deterrence and 02:49PM 4 rehabilitation. Rehabilitation has been tried in 02:49PM 5 your case, sir, and tried repeatedly, and it 02:49PM 6 simply has not worked.</p> <p>02:50PM 7 While the Court is not certain that 02:50PM 8 protecting the community is as much of a 02:50PM 9 consideration as it might be in other cases, 02:50PM 10 nonetheless, in this case, punishment and 02:50PM 11 deterrence are. And I think at this time the 02:50PM 12 Court's appropriate action considering all of 02:50PM 13 those factors is indeed to simply relinquish 02:50PM 14 jurisdiction and impose the underlying sentence.</p> <p>02:50PM 15 I will therefore relinquish 02:50PM 16 jurisdiction in the case today and impose the 02:50PM 17 sentence of five years with the first two years 02:50PM 18 fixed followed by three years indeterminate. 02:50PM 19 Actually, sir, by my calculations, you have spent 02:50PM 20 well over two years in custody in this case at one 02:50PM 21 time or another. In fact, it is going on three 02:50PM 22 years. I show that you have been in custody for a 02:50PM 23 total of 866 days as of today's date and you will 02:50PM 24 receive credit for that time towards the fixed 02:50PM 25 portion of your sentence.</p>	<p style="text-align: center;">59</p> <p>02:52PM 1 merit commutation of your sentence and I will deny 02:52PM 2 that request then as well.</p> <p>02:52PM 3 With that then, sir, I'll advise you 02:52PM 4 that you do have the right the appeal this 02:52PM 5 decision of the Court. The appeal has to be filed 02:52PM 6 within 42 days from the date the judgment enters. 02:52PM 7 If you are a needy person and cannot afford your 02:52PM 8 own attorney, one could be appointed for you at 02:52PM 9 state expense to help you prosecute your appeal. 02:52PM 10 Furthermore, as a needy person, the cost of the 02:52PM 11 appeal could be borne at state expense, as well.</p> <p>02:52PM 12 In this case, sir, given what you have 02:52PM 13 told me, I am also going to recommend to the Board 02:52PM 14 of Correction that you be considered for any and 02:52PM 15 all forms of therapeutic counseling while in their 02:52PM 16 custody. And my hope is that you will get some 02:52PM 17 benefit from that as well.</p> <p>02:52PM 18 Regardless, sir, my hope is when you 02:53PM 19 are finally released from custody, whenever that 02:53PM 20 might be, you will in fact be able to follow 02:53PM 21 through with what you have told me you will do and 02:53PM 22 that is to not violate the law further. And if 02:53PM 23 that is true, I should haven't to see you back in 02:53PM 24 court again.</p> <p>02:53PM 25 With that, thank you.</p>
<p style="text-align: center;">58</p> <p>02:50PM 1 You had filed a request, as I had 02:50PM 2 indicated before, two requests actually, one for 02:50PM 3 commutation of sentence and one for Rule 35 02:51PM 4 reduction of sentence.</p> <p>02:51PM 5 Specifically as to the Rule 35 motion, 02:51PM 6 the Court would find that it has no authority to 02:51PM 7 even entertain that request. I do show in your 02:51PM 8 case, sir, that a prior Rule 35 motion was filed 02:51PM 9 on February the 5th of 2013 and denied pursuant to 02:51PM 10 an order entered on July 8th of 2013. Pursuant to 02:51PM 11 Idaho Criminal Rule 35(b), no more than one motion 02:51PM 12 for reconsideration of sentence pursuant to Rule 02:51PM 13 35 may be addressed by the Court. And therefore, 02:51PM 14 the Court is simply without authority to consider 02:51PM 15 a second such motion at this time.</p> <p>02:51PM 16 The issue of commutation is provided 02:51PM 17 for in Idaho Code 19-2601, sub part one, and 02:51PM 18 20-240. However, the latter statute relates to 02:51PM 19 commutation by either the governor or by the 02:51PM 20 commission of pardons and paroles. 19-2601 sub 02:52PM 21 part one does afford the Court the authority to 02:52PM 22 commute a sentence in certain circumstances, 02:52PM 23 either to jail time or some other appropriate 02:52PM 24 provision. Nonetheless, sir, your performance on 02:52PM 25 probation in this case, in my opinion, does not</p>	<p style="text-align: center;">60</p> <p>02:53PM 1 02:53PM 2 (Hearing concluded.) 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>